

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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APR 11 2003

FCC MAILROOM

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April 14, 2003

Hon. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals II
445 12 Street, SW
Washington, D.C. 20554

RE: Comments of the New York State Department of Public
Service in the Matter of Federal-State Joint Board on
Universal Service - Notice of Proposed Rulemaking;
CC Docket No. 96-45

Dear Secretary Dortch:

For filing, attached please find the Comments of the New
York State Department of Public Service in the above-referenced
matter in response to the Commission's Notice of Proposed
Rulemaking, released February 25, 2003 and published in the
Federal Register on March 13, 2003.

Sincerely,

Kathleen H. Burgess
Assistant Counsel

att.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC MAIL ROOM

In the Matter of

Federal-State Board on Universal)
Service) CC Docket No. 96-45

COMMENTS OF THE NEW YORK STATE
DEPARTMENT OF PUBLIC SERVICE

INTRODUCTION AND SUMMARY

The New York State Department of Public Service ("NYDPS") submits these comments in response to the Federal Communications Commission's ("Commission") Notice of Proposed Rulemaking (Notice), issued February 25, 2003 and published in the Federal Register on March 13, 2003. The Notice seeks comment on the Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board) regarding the definition of services supported by universal service.¹ The Joint Board recommends that the Commission not modify the existing list of services supported by universal service.² The Joint Board was,

¹ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, FCC 02J-1 (released July 10, 2002) (Recommended Decision).

² These services include: single-party service; voice-grade access to public switch network; Dual Tone multi-frequency signaling or its functional equivalent; access to emerging services, access to operator services; access to interexchange service, access to directory assistance; and toll limitation services for qualifying low income customers.

however, unable to reach agreement on whether equal access to interexchange service (equal access) should be added to the list of supported services. The NYDPS supports the Joint Board's decision to maintain the existing list of services eligible for universal service funding and not add additional services to the existing list.³

DISCUSSION

Section 254(c) of the Telecommunications Act of 1996 (Act) establishes the criteria for services eligible for universal service support.⁴ The purpose of the universal service program is to ensure that a minimum level of telephone service is available in every home. We agree with the Joint Board's determination that the current definition of universal service "is necessary to ensure that all customers have access to fundamental telecommunications services that are necessary to utilize and enjoy the public telecommunications network."

The stringent standards and findings of the Joint Board

³ Recommended Decision, p. 3.

³ To be included in the list, services must be essential to education, public health or safety; subscribed to by a majority of residential customers; deployed in public telecommunications networks; and consistent with the public interest, convenience and necessity.

⁵ Recommended Decision, p. 4

appropriately limit the scope of general universal service programs. Adding a new service suggests that every household is expected to subscribe to and pay for that service. The end result is that customers will pay higher rates for their own "basic service," plus a higher universal service fee to cover the costs of making that new service available to all. As the Joint Board concluded, the definition of universal service "must strike the appropriate balance between ensuring the availability of fundamental telecommunications services to all Americans and maintaining a federal universal service fund of sustainable size."⁶

"Advanced Or High Speed" Services Do
Not Meet the Statutory Requirement.

NYDPS agrees that "advanced or high speed" services do not meet the criteria for supported services.⁷ The data most recently released by the Commission indicate that 14.4 million high speed lines served residences and small businesses, an increase of 27% over the previous period.' While subscription rates continue to increase, there is no evidence to suggest that

⁶ Id., p. 1

⁷ Id., p. 5

⁸ High-speed Services for Internet Access: Status as of June 30, 2002, "Industry Analysis and Technology Division, Wireline Competition Bureau, December 2002.

a "substantial majority" of households currently subscribe to Internet access in any form.

In addition, high-speed Internet access is not "essential to education, public health or public safety." It is not apparent that use of the Internet, while valuable for educational, public health and public safety, is "essential" as required by §251(c)(1). According to the Pew Internet & American Life Project, of those who have Internet access (any speed), little more than half have ever done research for school or training (53%), visited a government website (56%) or searched for health information (54%).⁹ Nor is there evidence that high speed access would provide capabilities superior to other communications, including radio and television, to deem it "essential."

The Existing Definition of Voice Grade
Access Should Not Be Expanded At This Time.

We support the Joint Board's recommendation to retain the existing definition of voice grade access.¹⁰ The proposed modification to include low-speed, dial-up Internet access does not meet the criteria of §254(c) at this time. Although the use of the Internet is becoming a more integral part of consumers'

⁹ <http://www.pewinternet.org/reports/chart.asp?img=Daily A8.htm>.
(viewed April 3, 2003).

¹⁰ Recommended Decision, p. 10

lives, it does not appear that a "substantial majority" of customers subscribe now. The recommendation to monitor development and usage of the network transmission component of Internet access¹¹ is an appropriate response to help determine whether costs that would be incurred in order to provide this service would be in the public interest.

"Warm Line" Or "Soft Dial Tone" Should Not Be
Added To The Capabilities Required To Be Included
In Universal Service.

We support the recommendation that states should determine whether soft dial tone or warm line is necessary.¹² The Joint Board noted that New York has implemented a successful soft dial tone program.¹³ Our experience indicates that a national solution, and the concomitant costs that would be incurred, would conflict with this program and eliminate the flexibility required to meet local needs. Therefore, soft dial tone should not be included in the definition of core services.

¹¹ Id., p. 12.

¹² "Warm line" or "soft dial tone" allows a line taken out of service through termination or suspension to still be used to access emergency assistance (911) or to access a local telephone company business office.

¹³ Recommended Decision, p. 12, citing Case 97-C-0139, Proceeding on the Motion of the Commission to Review Service Quality Standards for Telephone Companies, Memorandum and Resolution Adopting Provisions of Parts 602, 603, and 5644.2 of 16 NYCRR (released October 6, 2000).

Equal Access Should Not Be A Core Service

The NYDPS agrees with the Joint Board members who oppose the inclusion of equal access as a core service.¹⁴ In the First Report and Order, " the Commission declined to include equal access as a supported service because it would have imposed a requirement on Commercial Mobile Radio Service (CMRS) providers that they otherwise are not required to provide.¹⁶ We agree that the inclusion of equal access, as a core service, would indirectly impose requirements on CMRS providers if they wish to be an Eligible Telecommunications Carrier (ETC) that the statute directly prohibits.

Equal access and universal service were created for different purposes. Universal service funding was advanced to promote the availability of basic telephone service. On the other hand, carriers were required to provide equal access to address competitive concerns in the interexchange market. The NYDPS agrees it would not be in the public interest to require

¹⁴ Equal access to interexchange service, also called "dialing parity," allows customers to access their pre-subscribed long distance carrier by dialing 1 + the phone number.

¹⁵ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC 8776, 8819 ¶ 78 (1997) (First Report and Order).

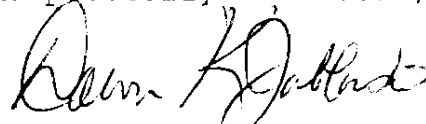
¹⁶ 47 U.S.C. §332(c)(8) prohibits any requirement that CMRS providers offer "equal access to common carriers for the provision of telephone toll services."

CMRS providers to provide equal access to receive universal service "merely because local exchange carriers are required to provide it as a result of other, wholly unrelated regulations."¹⁷ Further, requiring CMRS providers to include equal access may have the undesired effect of reducing competitive providers in rural and high cost areas, which would also not be in the public interest because it could jeopardize the provision of service in these areas

CONCLUSION

For all of the above reasons, the NYDPS supports the Joint Board's recommendation to not expand the current list of core services in the definition of universal service. The NYDPS also supports that portion of the Recommended Decision that opposes the inclusion of equal access as a core service.

Respectfully submitted,



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¹⁷ Recommended Decision, p. 29.